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The Lawyer and Civil Rights

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THE LAWYER AND CIVIL RIGHTS

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> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

Familiarity may have robbed the above words of their emotional impact but no lawyer can read these ringing phrases of the Declaration of Independence with attention and not reflect that they form the basis of our American society as well as our American government. To secure these rights our founding fathers declared the united colonies to be free and independent states and for the support of this Declaration and with a firm reliance on the protection of Divine Providence, they did mutually pledge to each other their lives, their fortunes and their sacred honor.

The colonies defended this independence in the course of the long and bloody Revolutionary War and on September 17, 1787, George Washington and delegates of twelve of the original colonies subscribed their names to a Constitution for the United States of America.

Historical Evolution

This Federal Constitution marked the highest degree of ordered liberty that any nation had ever achieved. Yet Article IV, section 2 contained the startling words:

> No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Slavery was thus perpetuated. Equality had not yet been acknowledged either in fact or before the law. Indeed Article I, section 2 also recognized an existing inequality when it apportioned representatives and direct taxes among the several states "according to their respective Numbers, which shall be determined by adding to the whole Number of Free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons."

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The Bill of Rights

To secure the ratification of the Constitution by the several states, Congress promised to enact a Bill of Rights. But none of the first ten amendments to the Constitution which eventually constituted this Bill of Rights was intended to effect an equality not already guaranteed by the Constitution. The social and economic system which had developed over the course of centuries would not readily yield to change and only the Civil War would make radical revisions possible in this era.

Later Amendments

The most far reaching of these changes resulting from the Civil War took the form of Constitutional amendments:

Amendment XIII, section 1 provided:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted shall exist within the United States, or any place subject to their jurisdiction.

Amendment XIV, section 1 provided:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Most importantly, amendment XV, section 1 declared: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." And section 2 provided: "The Congress shall have power to enforce this article by appropriate legislation."

Equality Unattained

Legally, now, the Negro seemed to have secured his rights. But the law remained to be enforced and equality was still just a dream.

No one had thought that an amendment to the Constitution would immediately transform an illiterate slave into the economic equal of New York financiers, the academic equal of the President of a university, the cultural equal of the leaders of Charleston society. Some had dreamed of immediate political equality and during Reconstruction days Carpetbaggers from the North secured the election to some political office of unlettered and incompetent Negroes. But this dream was short lived.

A more substantial dream envisioned the free Negro working at a job for which he was trained and which provided him with a livelihood for himself and his family; living in a home with at least the necessities of life; obtaining an education for himself or his children; enjoying the respect of his fellowmen as befits a human being; securing his rights by the use of the secret ballot and eventually qualifying himself for public office. Even this dream failed to materialize and on the eve of World War II the Negro had not achieved equality nor even equality of opportunity nationally in any substantial measure.

Yet some progress has been made. In the great northern cities where the white population constituted an overwhelming majority, the slowness of the Negroes' migration northward during the first few decades following the Civil War had enabled them to win some measure of equality. Some places of public accommodation were open to them and public schools and public transportation were usually not segregated. Yet employment opportunities were

still severely restricted and housing was usually available only in the least desirable residential areas.

In the South, however, the position of the Negro was sometimes little better and occasionally somewhat worse than slavery. Segregation was enforced by law in railroad stations, rest rooms, trains, busses, theaters, lunch counters, restaurants, hotels, public golf courses and public bathing beaches. Even public schools under the doctrine of *Plessy v. Ferguson*[1] were legally "separate but equal," though actually the quality of education in schools for Negroes was usually inferior to that in the "white schools."

Jobs were scarce, wages low and working conditions poor. Many trades and occupations were completely closed to Negroes. Agricultural workers frequently had poorer food, clothing and housing, little more education and much less security than a valuable slave had previously enjoyed.

By 1939, however, great sociological changes had begun. The depression of the thirties had driven thousands of Negroes northward to the great cities to compete for jobs and housing. Reports of the newcomers to those still in the South of the comparatively better economic condition in the North (though this often meant living on the "dole" or welfare benefits) encouraged still further migration.

The industrial impetus caused by the outbreak of war in Europe created more and better jobs for Negroes. The improvement in their economic condition stimulated a desire for better housing, better education and a greater share in all the advantages which other Americans enjoyed.

Social Development

Yet the catalytic agent which a vast social evolution required did not manifest itself until after the United States entered World War II. Prior to that time the people of the North were only aware of the plight of the Negro and had little desire and less incentive to change it. The great mass of white southerners, on the other hand, felt that the inferior economic, political, educational, social and cultural position of the Negro was practically necessary and even ordained by nature.[2]

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[1] 163 U.S. 550 (1896). Although the *Plessy* case involved "separate but equal" accommodations provided by a railway company the Supreme Court opinion which found the law which required equal but separate accommodations for the white and colored races to be a "reasonable exercise of the State police power" also declared that a state:

"... in determining the question of reasonableness is at liberty to act with reference to the established usages, customs, and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the races in public conveyances is unreasonable, or more obnoxious to the Fourteenth Amendment than the Acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislature."

[2] *Cf.* Hayes v. Crutcher, 108 F. Supp. 582 (M.D. Tenn. 1952) in which Judge Wilkin stated that since it is contrary to nature for black birds, white birds, red birds and blue birds to roost on the same limb of a tree, so it is contrary to natural law for colored persons to have a right to the use of a public golf course which by city ordinance was limited to white persons. It seems, he wrote, "that segregation is not only recognized in constitutional law and judicial decision, but that it is also supported by general principles of natural law." *Id.* at 585.

See, however, comments in Goble, *The Dilemma of The Natural Law*, 2 CATHOLIC LAW. 226, 233-34 (1956).

With the outbreak of war, however, the mass movement of members of the armed forces to all parts of the country did much to affect the social thinking of the country. White as well as colored servicemen from the North were shocked and enraged by the treatment of Negroes in the South. Even those white men who might have resented the movement of a colored family into their neighborhood at home deplored the degrading conditions under which southern Negroes lived. Colored servicemen, used to civil and generally courteous treatment in the North, rebelled at the position of inferiority which they were expected to assume among white civilians in the South.

By reason of their war-time experiences thousands of servicemen developed a new social consciousness which caused them to re-examine conditions in the North as well as in the South. Not the least of these experiences was the integration of the Armed Forces of the United States. Resented in many quarters, opposed for tenuous military as well as social reasons, sabotaged, delayed —the integration of the Armed Services finally became an accepted fact.

For the first time, in most cases, white boys had an opportunity to get to know individual Negroes personally, to work and live and recreate with them, to learn to get along with and, not infrequently, to develop a genuine liking for them. Negroes, on the other hand, sometimes developed strong friendships with white northerners (and occasionally with southerners as well) which enabled them to understand the prejudice of the white man and to dispel some of their own prejudices.

Another important factor in the changing climate of public opinion towards the Negro was the industrial development of the South. White employees from the North brought to the burgeoning industrial centers a more liberal atmosphere than that of the average southern community and prepared the way for a gradual, though still limited, acceptance of Negroes as fellow workers.

Nevertheless, the first real steps toward the realization for the Negro of equality of opportunity were taken in states where discrimination was not confined to Negroes and where other minority groups, either alone or in conjunction with Negroes, were able to obtain legislation prohibiting discrimination.

State Civil Rights Legislation

New York State Legislation

One of the earliest legislative efforts to implement the civil rights provisions of the federal and state constitutions was the Civil Rights Law which New York enacted in 1873.[3] That such laws were needed but that they are also difficult to draft and enforce was demonstrated by the history of the public accommodations section of the CRL. The legislature had endeavored to forbid discrimination on grounds of race, creed or color in places of public accommodation, resort or amusement and an attempt was made to define each of these terms by listing the various types of establishments which fell into each category.[4]

Following the tradition by which courts in common-law countries have strictly construed statutes which limit the use of private property, the courts of New York were hesitant to enlarge the list of establishments covered beyond those expressly set forth in the statute. Although the anti-discrimination statute enumerated barber shops for

[3] Chapter 186, An act to provide for the protection of citizens in their "Civil and Public Rights." See *Consolidators' Note on the Civil Rights Law*, McKINNEY'S N.Y. CIV. RIGHTS LAW 12 (1948).

[4] N.Y. CIV. RIGHTS LAW § 40.

instance, a beauty parlor in a department store was held to be exempt from the law since it was not part of a barber shop.[5]

Another defect in the early statutes lay in the remedies available.[6] Although violation of the statute made the violator liable to fine and imprisonment, the difficulty of proof beyond a reasonable doubt often made conviction impossible. Another remedy in the form of a penalty of from one hundred dollars to five hundred dollars to be recovered by the person aggrieved in a court of competent jurisdiction was available but the cost of bringing such an action greatly lessened the value of the remedy, since the vast majority of Negroes belonged to the lower income groups.

During World War II the New York Legislature gradually enlarged the area of civil rights enforceable at law.[7] The courts too manifested an increasingly liberal view. In 1941, for instance, Section 40 of the Civil Rights Law had been strictly construed for the reason that it imposed restriction on control or management of private property by the owner and was both penal and criminal.[8] In 1945, the same section was held to be remedial and therefore to be liberally construed.[9]

Opposition to Civil Rights Legislation

But gradually the opposition to further liberalization grew so strong in certain parts of New York State that the City of New York was forced to amend the City's Administrative Code in order to obtain results which could not be achieved by state legislation.[10] These changes encountered severe opposition both in their enactment and in their enforcement and it was apparent that the most liberal city in the most liberal state in the Union still experienced widespread and stubborn opposition to efforts to establish complete equality of opportunity for Negroes.

In other parts of the country the situation was much worse, particularly in those states where the advocates of greater equality for the Negro were unable either to muster sufficient political strength to effect needed legislation or to establish a moral

[5] Campbell v. Eichert, 155 Misc. 164, 278 N.Y. Supp. 946 (Sup. Ct. 1935). The section was later amended to include beauty parlors by name and the entire section has since been transferred to N.Y. EXECUTIVE LAW § 296.

[6] N.Y. CIV. RIGHTS LAW § 41.

[7] Laws of New York 1945, ch. 292, § 3; Laws of New York 1944, ch. 226, § 1; Laws of New York 1943, ch. 554, ch. 105, § 1; Laws of New York 1942, chs. 764-65. For a complete and excellent study of New York State's legislation governing civil rights see Note, *New York's Civil Rights Legislation—A Pattern of Progress,* 9 CATHOLIC LAW. 232 (1963).

[8] Delaney v. Central Valley Golf Club, 28 N.Y.S.2d 932 (Sup. Ct.), *aff'd,* 263 App. Div. 710, 31 N.Y.S.2d 834 (1st Dep't 1941), *aff'd,* 289 N.Y. 577, 43 N.E.2d 716 (1942).

[9] Camp-of-the-Pines v. New York Times Co., 184 Misc. 389, 53 N.Y.S.2d 475 (Sup. Ct. 1945).

[10] In 1957 a bill to prevent discrimination in private housing under certain conditions was introduced into the New York State Legislature by Senators Metcalf and Baker but failed of passage. Although the Democratic minority generally favored the bill the opposition came principally from Republicans and principally the up-state majority. See N.Y. Times, January 22, 1957, p. 31, col. 1; February 21, 1957, p. 20, col. 3.

That same year a similar bill was enacted into law by the overwhelmingly Democratic Council of the City of New York. Local Laws of New York 1957, no. 80. While the Governor in 1957 was a Democrat, Averell Harriman, the opposition to the bill by the Republicans in the state legislature was not on purely political grounds. A similar bill was killed in 1959 shortly after the inauguration of Republican Governor Nelson Rockefeller, see N.Y. Times January 27, 1959, p. 12. Despite the announced support of the bill by Governor Rockefeller, see N.Y. Times July 14, 1959, p. 1, col. 3, it failed of passage in 1960 and was not adopted until 1961.

climate in which the judicial and executive branches of the state and local governments could be persuaded or encouraged to enforce already existing constitutional or legislative mandates.

In the South, of course, the segregation and discrimination which had existed for generations was widely defended as a way of life and in some states little or no effective means of improving the lot of the Negro seemed to be then available or in the then foreseeable future.

Role of the United States Supreme Court

What the defenders and even many opponents of segregation had not foreseen was the intervention of the Supreme Court. In a series of historic decisions the Court struck down educational segregation laws in state after state, reversed long standing opinions including some of its own and gave notice that the civil rights provisions of the Constitution would be re-examined and reinterpreted.[11]

Many hailed the Supreme Court decisions as a new birth of freedom for Negroes and all oppressed minorities. Others condemned them as a violation of states' rights. Some welcomed the results but feared that the Court might soon become involved in such a myriad of details as to lose its effectiveness in matters of national and general importance.

Many objections to decisions and opinions of the Supreme Court came from illogical and intemperate critics but others emanated from most able and eminent judges, lawyers and legal scholars as well as from intelligent and thoughtful laymen. Some of these latter feared that the legal philosophy of a few members of the Court seemed to have more in common with the French Declaration of the Rights of Man than with the American Bill of Rights or with the Declaration of Independence and the Federal Constitution of which the Bill of Rights was a logical and historical development.

One scholar suggested that the Court should adhere more carefully to the canons of constitutional relevancy in its use of history. Others warned against the Court's departing from legal arguments and embarking on the uncharted seas of sociology. But to the eternal credit of the Supreme Court, may it be said that during the last decade it has attempted to give guidance and leadership in some of the most debatable and difficult areas of the law.

It is an axiom of jurisprudence that "hard cases make bad law." No wonder, then, that the efforts of the Court to shape the law by means of litigation in such a complex area as civil rights should meet with somewhat less than complete success. Some would have had the Court fall back upon the doctine of "stare decisis" and refuse to take jurisdiction in the School

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[11] The demise of the "equal but separate" doctrine was foreshadowed in four cases which required "equal in fact" educational facilities for Negroes. McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950); Sweatt v. Painter, 339 U.S. 629 (1950); Sipuel v. Board of Regents of Univ. of Okla., 332 U.S. 631 (1948); Missouri *ex rel.* Gaines v. Canada, 305 U.S. 337 (1938).

The death of that doctrine was officially pronounced by the Supreme Court in 1954 when it said:

"In the field of public education the doctrine of separate but equal has no place. Separate facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment." Brown v. Board of Educ., 347 U.S. 483, 495 (1954).

Segregation Cases.[12] It is true that historically, courts have frequently refused to attempt the impractical or the impossible. A court of equity, for example, will generally not grant specific performance to enforce a contract when to do so would engage the court in the construction business.[13] With some logic, therefore, the Supreme Court has been criticized for attempting by its own efforts and through the lower federal courts to assume the function of the nation's school boards.

But in the School Segregation Cases and in the various other civil rights cases, who can say that the Court was not acting as the conscience of the country? Who can say that the Court did not serve as the much needed catalytic agent which set in motion the present national efforts to right the moral wrongs which millions of American citizens have suffered? Who can say that the Court erred in transforming natural rights into civil rights?

It may be argued that in so doing the Court usurped the function of Congress or of the respective state legislatures. Perhaps it did. But no lawyer will deny that courts sometimes must and do "make" law. The necessity and wisdom of such procedure may well be questioned in each individual case and the courts generally exercise commendable self-restraint by advising litigants to apply to the legislature or to Congress for a remedy which the courts find lacking. Yet, how can one chide the Supreme Court for having dared to right a serious wrong when the legislative and sometimes the executive branches of government had defaulted in the exercise of their allegedly prior and paramount right and duty to provide a remedy?

[12] *Ibid.*

[13] 5 CORBIN, CONTRACTS § 1172 (1951).

Civil Rights Today

The present article does not propose to discuss at length the wisdom or the soundness of the decisions or opinions of the Supreme Court of the United States in cases involving civil rights. Neither does it propose to examine in detail the provisions of the Civil Rights Bill presently before Congress, much less attempt to suggest the most effective means for the complete and speedy emancipation of the Negro.

All of these things must be done effectively and thoroughly. But the task will not be easy. The Negro naturally demands complete equality and the enjoyment of every right *now*.[14] The hard-core segregationists strenuously resist even the least efforts to bring about such equality. The vast majority of Americans sympathize with the aspirations of the Negro but many, while sympathetic, are not yet psychologically prepared for all of the changes which complete equality would bring about. Others are not convinced intellectually or morally of the legitimacy or at least the timeliness of certain demands.

Consequently the Civil Rights Bill now before Congress, limited though it may be, has already encountered strong opposition from some genuine friends and advocates of civil rights for Negroes. They fear that a doctrinaire insistence on the inclusion in the

[14] *Cf.* the strong argument on behalf of equal rights for Negroes *"now"* through federal civil rights legislation presented by Senator Clifford P. Case of New Jersey before the Syracuse University Citizenship Program Oct. 2, 1963. N.Y. Catholic News, Oct. 3, 1963, p. 12 col. 3.

For a concise account of the nature and source of opposition to the Administration's 1964 Civil Rights Bill, see The Battle Begins on Civil Rights, 56 U.S. News and World Report, Feb. 10, 1964, pp. 31-32.

bill of certain provisions will endanger the passage of any bill at all. Such advocates argue that some demands should be met immediately, others should be pressed as soon as practically and politically possible, while still other demands should be deferred until experience with the results of guaranteeing some civil rights to Negroes by federal law may condition white opponents of racial equality to accept the final steps towards the complete emancipation of the Negro.

The Negro is understandably impatient of such counsels of prudence, caution and delay. If he has God-given and constitutional rights they should not be withheld from him. If he has such rights he should enjoy them now, not a year, ten years or a generation from now. The demand of some Negro leaders is that if laws are needed let them be enacted; if enacted let them be enforced—by persuasion and pressure if possible and by the bayonet if necessary.

Limited Effectiveness of Legislation

But some issues do not lend themselves to solution by force. Legislation is a legitimate weapon in the battle against discrimination. Laws properly drawn and energetically enforced can sometimes guarantee certain civil rights no matter how reluctantly the laws may be obeyed. The law can also be an effective means of education for good citizenship by specifying standards, developing habits of compliance and dissuading dissenters from active or forceful interference.

Nevertheless, the law can rarely progress very greatly in advance of the moral standards of the community nor far outstrip the citizens' psychological readiness for its observance. In a democracy, particularly, great reliance must be placed upon the willingness of citizens to obey the law and upon their capacity for self-discipline. When legislatures are reluctant to pass new laws, executives adverse to enforcing some already enacted, judges inclined to restrict their applicability and a considerable proportion of the citizenry prone to resist judicial decisions or court orders of which they disapprove, the law becomes impotent.[15]

The greatest challenge to our nation today, therefore, is one of education and persuasion: to move the minds and hearts of men. Governing and governed alike must be persuaded to discover and to follow the dictates of justice in this most difficult area of human relationship.

But this is precisely the role for which the lawyer is peculiarly fitted by education, experience and profession. The lawyer's oath, moreover, requires him to support the Constitution. The Canons of Professional Ethics impose upon him a duty to improve not only the law but also the administration of justice.[16]

Obligations of Catholic Lawyer

The Catholic lawyer, of course, has all the professional obligations of his non-Catholic colleagues. But he has an additional burden. For him the problem of civil rights cannot be limited to pragmatic questions of prudence or expediency, to difficulties of constitutional requirements or interpretations, nor even to the demands of natural justice. On the Catholic lawyer, by reason of his Faith and his religious training,

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[15] *Cf.* Note, *Anti-Discrimination Housing Legislation*, 9 CATHOLIC LAW. 71, 77 (1963).

[16] Canon 29, A.B.A. CANONS OF PROFESSIONAL AND JUDICIAL ETHICS 26 (1957). This canon and the Oath of Admission have been substantially adopted by the state courts and Bar Associations throughout the country.

there devolves a special obligation of determining how and to what extent the law of God is applicable in defining and enforcing the law as it pertains to civil rights.

He has, of course, the assistance of Sacred Scripture, the teaching of the Church, papal pronouncements, the admonition of bishops, and the opinions of theologians and other scholars. But in the last analysis each lawyer must, before God and within his own conscience, determine the part that he as an individual must play in helping to achieve the effective transformation of natural and God-given rights into civil rights.

Message of Catholic Bishops

The Catholic Bishops of the United States stated the issue succinctly in their 1958 annual message:

> The heart of the race question is moral and religious. It concerns the rights of man and our attitude toward our fellow man. If our attitude is governed by the great Christian law of love of neighbor and respect for his rights, then we can work out harmoniously the techniques for making legal, educational, economic, and social adjustments. But if our hearts are poisoned by hatred, or even by indifference toward the welfare and rights of our fellow man, then our nation faces a grave internal crisis.[17]

This was not the earliest admonition of the Bishops. In their 1943 message they had declared:

> In the providence of God there are among us millions of fellow citizens of the Negro race. We owe to these fellow citizens who have contributed so largely to the development of our country and for whose welfare history imposes upon us a special obligation of justice, to see that they have in fact the rights which are given to them in our Constitution. This means not only political equality but also fair economic and educational opportunities, a just share in public welfare projects, good housing without exploitation, and a full chance for the social advancement of their race.[18]

The message continued:

> In many of our great industrial centers acute racial tensions exist. It is the duty of every good citizen to do everything in his power to relieve them. To create a neighborhood spirit of justice and conciliation will be particularly helpful to this end. We hope our priests and people will seek opportunity to promote better understanding of the many factors in this complex problem and strive for its solution in a genuine Catholic spirit.[19]

The two decades which have elapsed since the 1943 appeal by the Catholic Bishops for justice and charity for the Negro have witnessed great progress in the position of the Negro in America and in the attitude of Catholics towards the Negro. That the words of their Bishops were not unheeded by many Catholics may be gathered from the observation of the Archbishop of Atlanta, Most Reverend Paul J. Hallinan:

> All Catholic schools (Archdiocesan and private) are fully integrated. Our Catholic people are loyal to the Church—that is the tradition in Georgia. White and Negro, they have accepted the integrated policy not because of pressures but because of principle —it is the teaching of the Church. Although, emotionally, some white Catholics may not like it, they have accepted it intellectually and, more importantly, morally.[20]

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[17] N.Y. Catholic News, Nov. 22, 1958, p. 1.

[18] N.Y. Catholic News, Nov. 20, 1943, p. 1. Similar observations by members of the American Hierarchy might be multiplied indefinitely, *e.g.*, Address to Urban League by Most Reverend Patrick A. O'Boyle, Archbishop of Washington, The Catholic Standard, May 10, 1963, p. 1.

[19] *Ibid.*

[20] N.Y. Catholic News, Aug. 15, 1963, p. 1.

Catholic Opposition

But a few Catholics have not heard or will not listen to the voice of their Bishops. In Louisiana a Catholic school scheduled for integration was picketed, bombed and denied a certificate of occupancy in a city where the Mayor and other Catholics were excommunicated because of their defiance of the Bishops of the diocese in his efforts to integrate the Catholic schools. In Cleveland an attempt by Negroes and white integrationists to picket a public school in a predominantly white Catholic neighborhood was violently disrupted by disorderly, missile hurling crowds who booed ten priests who tried in vain to disperse them.

A Negro Catholic described his feelings as the first of his race to integrate the all-white Philadelphia suburb of Alden, Pennsylvania:

> I have a Catholic neighbor who doesn't speak to me and who is very antagonistic. Yet we both attend the same church, receive Holy Communion at the same altar rail and claim membership in the Mystical body of Christ.[21]

One may point out in rebuttal that the preceding statement was made by William Saunders in the course of an address which he had been invited to make before the predominantly white but sympathetic Holy Name Society of St. Francis de Sales Catholic Church, Barrington, New Jersey. Yet the fact remains that there is frequently a vast gulf between the teaching of the Catholic Church and the practice of individual Catholics.

Archbishop Hallinan has defined the problem as emotional, intellectual and moral.

Civil Rights as an Emotional Problem

Cardinal Cushing of Boston clearly states the emotional nature of the problem.

> It would seem that we are confronted here with a particular instance of a much more general and comprehensive problem of human adjustment. People differ greatly from one another as individuals. The points in which they differ often make it difficult, and even morally impossible, for them to associate with one another in an intimate and personal way.... We must not be surprised if the forces which bring human beings together and keep them apart spring from the deep roots of emotional and bodily constitution, rather than from the nobler potentialities of the soul. Nor must we be surprised if prejudice and blind refusal to discover and live by the truth, sometimes presents an insuperable obstacle against personal association which will not yield to reasonable argument.[22]

Undoubtedly many unfortunate souls suffer from such a severe emotional imbalance as to lack all sense of responsibility and self-control. But all too many prejudices flourish in a state of ignorance which could and should be dispelled. As Cardinal Cushing further observes:

> Emotions belong to human nature no less than do intelligent perception and voluntary choice. The problem in any field of human relationship is to keep emotions under control and to bring them into proper integration with the other human forces which function in the development of the society in which God has destined us to work out our eternal destiny.[23]

Civil Rights as an Intellectual Problem

An intelligent and well-balanced person, therefore, will learn to subject his emotions to the dictates of reason. Hence the neces-

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[21] Brooklyn Tablet, Oct. 3, 1963, p. 4.

[22] 1963 Lenten Pastoral Letter "Inter-racial Justice" p. 6.

[23] *Id.* at 3.

sity for an informed intellectual approach to the problem of civil rights.

The term civil rights in its broadest sense has been legally defined or described as:

> Those rights which are the outgrowth of civilization, which arose from the needs of civil as distinguished from barbaric communities and are given, defined and circumscribed by such positive laws, enacted by such communities as are necessary to the maintenance of organized government, and comprehends all rights which civilized communities undertake, by the enactment of positive laws, to prescribe, abridge, protect and enforce.[24]

Another court has declared that:

> Civil rights are distinguished from "natural rights" which would exist if there was no municipal law, some of which are abrogated by municipal law, while others outside its scope and still others are enforceable under it as "civil rights."[25]

Natural rights in turn have been legally defined as:

> [T]hose which grow out of the nature of man and depend upon his personality and are distinguished from those which are created by positive laws enacted by a duly constituted government to create an orderly civilized society.[26]

Still another court has stated that:

> [B]y the term "natural rights" is meant those rights which are necessarily inherent, rights which are innate and which come from the very elementary laws of nature such as life, liberty and self-preservation.[27]

Without presently engaging in a discussion concerning the validity of the neo-Scholastic or other jurisprudential theories of natural rights[28] we may conclude from the above quotations that the courts have in practice recognized that certain so-called civil rights are so basic and so universally recognized as necessary for the welfare of all mankind as to distinguish them from other civil rights. And because these basic rights are so intimately connected with the very nature of man, we shall for our present purpose speak of them as natural rights.

Pacem in Terris

Perhaps nowhere have these basic or natural rights been better catalogued than in the Encyclical Letter *Pacem in Terris* which the late Pope John XXIII addressed to the world on April 11, 1963.

After an introduction in which he distinguished the laws which govern man from those which control the irrational universe, Pope John enumerates the principal rights and duties which arise from man's dignity as a human being having intelligence and free will, and which are universal, inviolable and inalienable.[30]

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[24] Byers v. Sun Sav. Bank, 41 Okla. 728, 139 Pac. 948 (1916).

[25] State v. Powers, 51 N.J.L. 432, 17 Atl. 969 (1889).

[26] *In re* Gogabashvele's Estate, 16 Cal. Rptr. 77, 91, 195 Cal. App. 2d 503, 517 (1961).

[27] Byers v. Sun Sav. Bank, *supra* note 24, at 730, 39 Pac. at 949.

[28] For a discussion of the Natural Law theory of rights, see Cahill, *Natural Law Jurisprudence in Legal Practice,* 4 CATHOLIC LAW. 23 (1958); Barrett, *The Natural Law and the Lawyer's Search for a Philosophy of Law,* 1 CATHOLIC LAW. 128 (1955); Katz, *Natural Law and Human Nature,* 1 CATHOLIC LAW. 70 (1955). Of particular interest may be the series of articles between George W. Goble, Professor of Law at the University of Illinois and Father William J. Kenealy, S.J., Professor of Law and former Dean of Boston College of Law: Kenealy, *Scholastic Natural Law—Professor Goble's Dilemma,* 3 CATHOLIC LAW. 22 (1957); Goble, *Dilemma of the Natural Law,* 2 CATHOLIC LAW. 226 (1956); Goble, *Nature, Man and the Law: The True Natural Law,* 41 A.B.A.J. 403 (1955); Kenealy, *Whose Natural Law?,* 1 CATHOLIC LAW. 259 (1955).

[29] See reprint of *Pacem in Terris, infra* at p. 28.

[30] *Pacem in Terris,* paras. 1-7, 9 (1963).

Basic and Specific Rights

Man has a right, first, to life, bodily integrity and the basic necessities for subsistence and economic security; to reputation and to free inquiry and exchange of opinions, and to truth about public affairs; to education and training for his role in society and to advancement on merit.[31]

Man also has a right to worship God publicly and privately according to the dictates of conscience; to choose his own state of life; to marry and to be aided in maintaining his family as an essential cell of society; to have prior right in educating his children.[32]

Man's economic rights include free initiative and the right to do a job; also decent working conditions, with special consideration for the young and for women.[33]

Human dignity also demands a sharing in responsibility and a decent family wage. Private property is a natural right but one having an inherent social aspect.[34]

Man's social nature is the basis of his right to freedom of assembly and of association in groups freely chosen and organized which will guarantee his human dignity and safeguard his freedom.[35]

Finally, man has a right to move and dwell where he will for just reasons. Politically he has a right to participate in public affairs and a right to due process and fair play under just laws.[36]

But there are inextricably bound up with these rights an equal number of duties:

> Thus, for example, the right to live involves the duty to preserve one's life; the right to a decent standard of living, the duty to live in a becoming fashion; the right to be free to seek out the truth, the duty to devote oneself to an ever deeper and wider search for it.[37]

This encyclical, therefore, might be read as a character of liberties for the Negro. Its scope, of course, is broader than our present consideration of civil liberties and yet all too many Negroes do not enjoy many of the rights which it defines.

Role of the State

Only by reading the text of *Pacem in Terris*[38] can one fully grasp the emphasis which Pope John has placed on the necessity for individuals to respect the order which should exist among men. Yet the Holy Father recognizes that a universal observance of the rights of others cannot even be partially achieved without the intervention of some public authority.

Civil authorities derive their authority from God although the citizens retain a right to choose who are to rule the state, to decide the form of government and to determine both the way in which authority is to be exercised and its limits.[39] In every aspect of government, therefore, the civil authorities must act in conformity with the present demands of the common good. All must share in the benefits of government according to their circumstances and without discrimination, though justice and equity may demand special consideration for the less fortunate or the disadvantaged.[40]

A government which does not acknowledge or safeguard the rights of man fails in its duty and lacks authority. Its fundamental duty is to regulate society so as to

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[31] *Id.* at paras. 11-13.
[32] *Id.* at paras. 14-17.
[33] *Id.* at paras. 18-19.
[34] *Id.* at paras. 20-22.
[35] *Id.* at paras. 23-24.
[36] *Id.* at paras. 25-27.
[37] *Id.* at para. 29.
[38] *Id.* at paras. 8-44.
[39] *Id.* at paras. 46-52.
[40] *Id.* at paras. 53-56.

guarantee men's rights and duties or to restore them.[41]

Civil authorities must intervene in economic, political and cultural affairs to eliminate inequalities and insure individual exercise of rights and fulfillment of duties. This will involve providing services on many levels and seeing that citizens are insured against misfortunes.

In meeting new problems, legislators must never forget the norms of morality, constitutional provisions and the objective demands of the common good; executives must use discretion; courts must judge impartially. A sound juridical structure greatly helps achievement of the common good but a changing world calls for prudent adaptation of this structure to meet new needs.

Civil Rights as Moral Problem

Peace on earth, which is the subject matter as well as the title of this encyclical, can never be established, never guaranteed, except by the diligent observance of the divinely established order.[42] Sacred Scripture tells us that God created man "in His own image and likeness." In extolling the grandeur of man the psalmist proclaims "Thou hast made him a little less than the angels: thou has crowned him with glory and honor, and hast set him over the works of thy hands. Thou has subjected all things under his feet."[43]

By the very terms of the teaching of his Church, the Catholic must believe that all men are God's special creatures, made to His image and likeness. The Catholic believes that the Son of God, Jesus Christ, the God-man, came into the world to save all men; that on the Cross of Calvary He shed His Blood to redeem all mankind from their iniquity—all, without any exception.[44]

Consequently peace on earth, in the context of our present discussion of civil rights cannot be established unless the precepts of the divinely established order are translated into specific and practical programs, policies, attitudes and even laws. The very nature and purpose of an encyclical prevent its being a source of specific information or direction concerning the needs of a particular situation. It can serve only as a source of guiding principles which others must apply.

For this reason, therefore, we shall devote the remainder of this article to a discussion of some of the major specific problems in the area of civil rights and to a summary of a few of the ways in which Catholics and Catholic lawyers in particular can cooperate in the solution of these problems.

The four major problems which we may most profitably discuss are (1) the right to vote, (2) employment, (3) education, and (4) housing.

Major Specific Problems

1. The Right to Vote

Were the Negro to enjoy the right of suffrage without any unfair or contrived obstacles, his position throughout the country would be greatly improved almost at once. Much of the progress which has been made in great cities like New York can be traced to the influence of the Negro vote and to the fact that in many districts it holds the bal-

[41] *Id.* at paras. 60-62.
[42] *Id.* at para. 1.
[43] Ps. 8, 6-8.
[44] *Pacem in Terris,* para. 10. See also Gleason, *The Immorality of Segregation,* in O'NEILL, A CATHOLIC CASE AGAINST SEGREGATION 1, 12-13 (1961) and Kenealy, *Racism: A God-Damned Thing,* 61 CATHOLIC MIND 23, 27-28 (Nov. 1963).

ance of power between conflicting political groups.

The recent adoption of the twenty-fourth amendment to the federal constitution barring the poll tax in federal elections, indicates the conviction of the nation as a whole that freedom to vote constitutes a right which should not be limited by property qualifications.[45]

Yet in areas where the potential Negro vote is comparatively large, white voters frequently fear the possible consequences to their way of life—political, economic and social—which may result from a broad extension of the ballot to Negro voters.

When this fear stems from a demonstrable lack of reasonable educational qualifications of potential voters, equally reasonable restrictions can be justified but only if the restrictions are imposed without discrimination as to race and color.

2. Public Office

When the fear stems from a possibility that an extension of the ballot may enable qualified Negroes to win election to public office, artificial and discriminatory restrictions are completely unjustified.

The growth or entrenchment of a ruling class would foreshadow the death of democracy in America. For this reason the establishment of voting blocks based on race, color, national origin or religion, while rightly deplored as an imperfection in our method of government, may to some extent be tolerated as an attempt to assure representation in government of every substantial group or interest.

Theoretically, an honest and competent government can promote the welfare of all classes regardless of how its personnel is recruited or selected. Practically, however, few persons can adequately understand the culture, problems, fears, aspirations, needs, or point of view of certain groups unless they have been born into those groups or have been long and intimately associated with them.

Officials of every branch of the government should attempt to inform themselves of the needs, interests and aspirations of every group including those of the Negro. No artificial impediments should be placed in the path of a Negro candidate for office, especially when the interests of the Negro community are substantial or in jeopardy. Qualified Negro candidates for office should be recruited and supported for election if superior to other candidates.

3. Legal Profession

Leadership among the various Negro communities has generally come from present or former clergymen. The inspiration, encouragement and leadership which they have provided cannot be exaggerated. At the same time the implementation of programs for the elimination of discrimination requires professional skills which only lawyers and experienced government administrators can provide. Lawyers largely control the legislative, judicial, executive and administrative functions in America. They also exert a strong influence upon government in the role of private citizens as well as members of the organized bar. Consequently lawyers have a special obligation not only to exert their own best efforts for the improvement of the lot of Negroes in general but they should endeavor to encourage qualified Negro students to study law and assist them to find an honored and

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[45] See N.Y. Herald Tribune, Feb. 5, 1964, p. 9, col. 1.

useful place in the profession.[46]

4. Employment

The difficulties encountered by a Negro or one helping a Negro to find employment in any area are most frequently prejudice and fear of economic penalties on the part of the employer and lack of sufficient or specific education on the part of the applicant for a job.

Efforts to combat prejudice must be made at every level but they will not suffice. According to Percy Williams, assistant executive director of the President's Committee on Equal Opportunity, "affirmative action is more important than passive statements. It is not enough not to discriminate; there must be affirmative action. We must explode the myth that employers lose customers when they hire a Negro."[47]

The federal government has taken the lead in an effort to extend employment opportunities to Negroes. The policy requires objective qualifications of all applicants and Harry Traynor, assistant general manager for administration of the United States Atomic Energy Commission has urged Negroes to capitalize on these opportunities by acquiring more education.[48]

5. Trade Unions

Theoretically the requirement of union membership should no longer be an obstacle to employment for a Negro. So-called "lily white" unions whose constitutions formerly barred Negro workers from membership no longer exist. In practice, however, according to Rt. Rev. Msgr. George G. Higgins, Director, Social Action Department, National Catholic Welfare Conference,

> [A] number of key unions are still effectively excluding Negroes from their ranks by making it extremely difficult, if not impossible, for them to qualify for membership. They do this by the simple device of refusing to enroll them in their apprenticeship programs or by arbitrarily restricting the number of Negro apprentices. Other unions are still discriminating against their Negro members by confining them to second-class membership in so-called auxiliary locals. Both of these practices are completely unethical and run directly contrary to the stated policy of the American labor movement. They must be remedied immediately.[49]

Realistically, the problem of Negro unemployment cannot be solved without a solution to the larger national problem of unemployment. Providing adequate training and motivation for unskilled Negro workers can help to solve the problem of racial inequality but it cannot be completely eliminated by anything short of full employment.[50]

To a great degree the employment problem is a vicious circle. Without a job, the Negro has no way of obtaining an education for himself or for his children. Without adequate education, he cannot get a job.[51]

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[46] "Lawyers as a rule are of the propertied class . . . and they have seldom shown themselves, except in rare exceptions, sympathetic with the claims of other classes." Hand, *Have the Bench and Bar Anything to Contribute to the Teaching of Law,* 5 AM. L. REV. 621, 624 (1926).

[47] See Washington Catholic Standard, Oct. 25, 1963, p. 5.

[48] *Ibid.*

[49] 1963 Labor Day Statement, p. 3.

[50] *Id.* at 6. While the obvious ridiculousness of her tongue-in-cheek program provided amusement for the nation, the presidential platform recently proposed by Clare Booth Luce underlined the difficulty of ever finding a complete solution to the problems of the under-privileged. *E.g.,* "I am for lifting everyone off the social bottom. In fact, I am for doing away with the social bottom altogether." 83 Time, Feb. 14, 1964, p. 15, col. 3.

[51] Rev. John F. Cronin, S.S., Assistant director, Social Action Department, National Catholic Welfare Conference, Washington Catholic Standard, Oct. 25, 1963, p. 5.

Nevertheless, while making every effort to better the condition of the Negro economically and to increase the number and quality of jobs open to him, government, private organizations and private individuals must make every effort to improve the educational opportunities of the job-seekers of the future.

6. Education

To some degree the problem of better education for Negroes differs little from the national problem of "drop-outs" and reluctance on the part of many teen-agers to take full advantage of the educational opportunities open to them. Nevertheless the problem of segregation whether deliberate or "de facto" severely complicates the problem.

The Supreme Court has outlawed deliberate segregation on the grounds that a segregated school cannot be the academic equal of a non-segregated school. For similar reasons, therefore, many proponents of educational equality for Negroes have attacked "de facto" segregation which has resulted from the policy of assigning public school children to a neighborhood school even though the neighborhood may be entirely or predominantly Negro.

According to Father Robert F. Drinan, S.J., Dean of Boston College Law School and an articulate and able advocate of the Negro cause,[52] child psychologists and educators of no small repute have opposed "de facto" segregation with cogent reasons. Father Drinan notes three main theses in support of the case against the racially imbalanced school:

> 1. The motivation to learn, so essential if pupils are to achieve anything worthwhile, is seriously impeded in a virtually all-Negro school. Students in such an atmosphere do not come in contact with men and women whose example inspires them and whom they can emulate. The Negro student in a neighborhood school does not see beyond the poverty, unemployment and frustration of his parents and of the whole community where he grows up.
> 2. Without such motivation, normally intelligent Negro children will fall behind; there will be, among them, far more academic failures and "drop-outs" than among white children in a like situation.
> 3. This academic failure on the part of large numbers of Negro children creates a vast permanent pool of Negro young people who, lacking skills, are unemployed in numbers disproportionate to their class.[53]

Father Drinan then points out that these reasons are based on non-empirical testimony.

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[52] Speaking at a national legal conference conducted by the Congress of Racial Equality (CORE) recently, Father Drinan emphatically endorsed the morality and legality of the Negro protest movement including civil disobedience of laws Negroes consider unjust and the use of children in civil rights demonstrations. In his opinion the present injustices suffered by Negroes create a "presumption" that ordinary legal and social means are not enough and "director supra-legal, non-violent action is the only alternative way" for Negroes to win redress of their grievances. When "citizens openly disobey a law that they hold to be unjust and ask for the penalty, they are saying in effect that they would rather be in jail than live freely in a society which tolerates such a law." Long Island Catholic, Feb. 6, 1964 p. 5, col. 3.

It was further stated: "In hundreds of grievances there is no legal machinery to process the complaint, much less bring it to the state of 'last resort.'

Some injustices, furthermore, place their victims in such pain, humiliation and moral peril that the minority group . . . has not merely a right but conceivably a duty to bring them to public attention by some dramatic or even spectacular conduct." *Ibid.*

[53] Drinan, *Racial Balance in Schools,* 110 AMERICA 158 (1964).

> However logical such a line of reasoning may appear, its conclusions are not supported by careful observation. Perhaps it can never be scientifically demonstrated that a *de facto* segregated neighborhood and school are in large part responsible for the absence of a motivation to learn. But there are not even any totally reliable data to show that the transfer of Negro pupils to a racially balanced school will necessarily improve their motivation.[54]

In any event the present controversy over "de facto" segregation is as intense as any conflict over enforced segregation. Unfortunately the problem of "de facto" segregation is even more difficult to define much less to solve.

New York City, for example, has several extensive areas populated almost entirely by Negroes. Consequently the schools in those neighborhoods have become classic examples of "de facto" segregation and the center of a major effort by Negro leaders to force the integration of all New York schools.

The Board of Education had long since recognized the comparative inferiority of some of these schools and under the leadership of James B. Donovan, President of the Board, and with the cooperation of Calvin Gross, Superintendent of Schools, had announced a plan for the immediate integration of some schools and the erection of new schools which certain Negro groups had declared unsatisfactory.[55]

On February 3, 1964 under the leadership of Rev. Milton A. Galamison, chairman of the Citywide Committee for Integrated Schools, conducted a massive demonstration by Negroes and many sympathizers which included the picketing of public schools and a peaceful march on the Board of Education Headquarters.[56] Whether the boycott of schools by 260,000 pupils was a success as Mr. Galamison claimed or the "fizzle" which Mr. Donovan claimed it to be,[57] the fact remains that the problem of school integration demands and may reasonably claim the attention and cooperation of every lawyer.

Compromise and gradual progress are inevitable in the early stages of the negotiation between Negroes and school officials. Even the legitimacy of the school boycott may reasonably be questioned. Demonstrations, per se, of course, have won the endorsement of Catholic authorities. Over 10,000 Catholics, including six bishops and archbishops, took part in the march on Washington for jobs and freedom which was opened with an invocation by Archbishop Patrick A. O'Boyle of Washington.[58]

The use of children in demonstrations and their participation in school boycotts has been justified by Father Drinan but other Catholic spokesmen have questioned the wisdom and even the justification of the school boycott. The Pilot, official organ for the Archdiocese of Boston, recently denounced as "melodramatic and ill-conceived" a Boston Conference on Religion and Race proposal to foster a children's boycott of local public schools as a protest against "racial imbalance." The editorial described the proposed demonstration as a "massive bad example to young people in

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[54] *Ibid.*

[55] N.Y. Herald Tribune, Jan. 27, 1964, p. 17, col. 7.

[56] N.Y. Times, Feb. 3, 1964, p. 1, col. 8.

[57] Long Island Catholic, Feb. 6, 1964, p. 16, col. 1.

[58] Brooklyn Tablet, Sept. 5, 1963, p. 12 col. 1. Present in addition to Archbishop O'Boyle were Archbishop Lawrence J. Shehan of Baltimore, Bishop John J. Russell of Richmond, Va., Bishop Michael W. Hyle of Wilmington, Del., Auxiliary Bishop Philip Hannan of Washington, D.C. and Auxiliary Bishop Ernest L. Unterkoefler of Richmond.

their relationship with the school and law."[59]

Here again, then, can the lawyer find an opportunity and a challenge to bring to this complex problem the skills of counsel and advocacy which have transformed so many ideas and hopes of freedom into realities and which must again be utilized if the problem of school segregation is to be settled by the rule of law and reason rather than force and strife.

7. Housing

No less controversial than methods of integrating the schools and equally difficult of solution is the problem of segregated housing. In many areas the housing available to Negroes reflects crowding and poorer living conditions for the same or greater rent as that available to white persons. In some cases this condition can be blamed on the poverty of the inhabitants of slum areas but many Negroes are quite capable economically of occupying better quality housing which would be available to them in the absence of discrimination.

Typical of the discriminatory practices which foster such conditions are those condemned as immoral by the Washington Inter-religious Committee on Relations, under the chairmanship of Archbishop Patrick A. O'Boyle, in a statement before the District Commissioners' public hearing on proposed regulations to prohibit discrimination in housing:

> 1. The refusal to sell or rent a house or apartment to a financially and morally qualified purchaser or tenant, solely by reason of his race, color, religion or national origin;
> 2. The refusal of a lending institution to lend money, insure a loan or accept a mortgage in connection with a financially and morally qualified person's desire to purchase property, solely by reason of the applicant's race, color, religion or national origin;
> 3. The use of what are called 'block busting' tactics, that is, to create panic among residents in an area, and to persuade residents to sell their homes because one or more Negro families, or families of other ethnic groups, have purchased or reside in the area.[60]

The Inter-religious Committee condemned as a failure of moral responsibility any act which would merely declare such discriminatory practices illegal without providing adequate machinery for the enforcement of the ordinance. The Committee did not presume to spell out in detail the kind of enforcement machinery which would be needed to discourage or prevent discrimination. It contented itself with a suggestion of guiding principles. In so doing the Committee presented not only the commissioners but the legal profession with a challenge which illustrates both the opportunity and obligation for public service which every lawyer is obliged to accept according to the needs of his own community. He must either personally or by his advice, suggestions, persuasion, letters, or other appropriate means spell out in a detail which is beyond the competence of laymen (1) the sort of enforcement machinery that is necessary and effective, (2) the number and qualification of personnel needed to staff the court,

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[59] Brooklyn Tablet, Jan. 23, 1964, p. 2, col. 1. While admitting a need for continuing attention to the needs of the Boston public schools the editorial noted the willingness of the school committees and superintendents to cooperate with other resources in the community to improve conditions. Clergymen should show respect for the professional educator and work with programs for meeting deficiences.

[60] Washington Catholic Standard, Aug. 3, 1963, p. 1.

bureau or commission charged with the task of enforcement, and (3) the utility of redress by conciliation, saving recourse to punitive sanctions as a last resort.[61]

The Catholic lawyer in particular must take the lead in this matter. Not only must he help to work out a practical solution to the many difficulties involved in legislating effectively against discrimination in housing but he must help to persuade others of the necessity of accepting Negroes as neighbors. While many a Catholic will recognize theoretically the moral nature of this problem he suddenly finds that it is "nothing more than economic and social as soon as his block is involved."[62]

Role of The Lawyer

The foregoing discussion indicates clearly the variety and scope of opportunities for this cooperation but it by no means exhausts the endless variety of ways in which a lawyer may help to fight discrimination. It may be useful, therefore, to suggest some additional means by which the lawyer, and particularly the Catholic lawyer, may participate at the personal and community level.

Personal Attitude

In the first place the lawyer must constantly recall the second great commandment of the law "Thou shalt love thy neighbor as thyself."

Please God, there are no lawyers with hatred in their hearts for their Negro brethren but if there are let their colleagues at the bar join in the prayer of Archbishop Thomas J. Toolen, Bishop of Mobile-Birmingham:

> I pray God that they will pluck this hatred out of their hearts and remember that all men are created equal, all are redeemed by the Precious Blood of Christ. Though their color may be different than that of the white man, their soul may be much purer than those seeking to destroy them.[63]

Few would not condemn the bombing which killed four little Negro girls in Birmingham, Alabama, and few would applaud the slaying from ambush of Medgar Evers in Jackson, Mississippi. But the law of God makes much greater demands than that a man not murder his brother. Christ demands that one love his fellow man with a positive love and that that love be manifested not merely by the avoidance of injury to one's neighbor but in promoting his welfare.

Not without purpose did Christ choose a Samaritan, a contemporary object of hatred and discrimination, as a model of what the good neighbor should be and as a rebuke to those who rejected that model.

The most crucial test of love of God is love of neighbor for: "If anyone say 'I love

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[61] Cheatham, *The Lawyer's Role and Surroundings,* 25 ROCKY MT. L. REV. 405 (1953). It is not enough to have a legal framework for society. Law is not self-applying; men must apply and utilize it in concrete cases. But the ordinary man is incapable. He cannot know the principles of law or the rules guiding the machinery of law administration; he does not know how to formulate his desires with precision and to put them into writing; he is ineffective in the presentation of his claims. This is so whether the matter involved be a petty claim or the Bill of Rights, and it continues so despite the Benthamite effort to simplify the statement of law. To achieve reality and meaning for law there is need for the services of a group skilled in the knowledge and application of the law.

[62] Long Island Catholic, Sept. 26, 1963, p. 11. *Cf.* Sermon by Very Rev. Msgr. Archibald V. McLees, chaplain of the Brooklyn Catholic Inter-racial Council, at the Annual Red Mass of the Catholic Lawyers Guild of Rockville Centre. "[T]he decision to treat a neighbor coldly as a weapon to get rid of him is not only foolish; it is sinful."

[63] Brooklyn Tablet, Sept. 19, 1963, p. 1, col. 4.

God' and hates his brother, he is a liar. For how can he who does not love his brother whom he sees, love God whom he does not see?"[64]

Therefore, let the lawyer love God but let him love also his neighbor in God and for God. This should not be a mere slogan; it should be a principle of action. But for each individual lawyer the program of action must differ. The most obvious difference in programs of action must arise from the varying opportunities to participate in a civil rights program which lawyers may discover.

Judge

A judge, for instance, must confine his official actions to the legal matters brought before him for decision. He can rarely initiate activity in such matters but he can see that the poor and unfortunate receive care and consideration in his court, mindful of Pope John's admonition that those involved in civil government give attention to the less fortunate members of the community, since they are less able to defend their rights and to assert their legitimate claims.[65]

Executive

So, too, officials of the executive branch of the government may sometimes be limited by reason of their office in the manner and extent to which they can promote racial equality. Yet the fair administration and enforcement of law constitute the very essence of any program of civil rights and lawyers who hold key and sensitive posiions in government must be aware of the particular obligation they have to take the initiative, when they legitimately can, in improving the lot of the poor and the oppressed.

Legislator

Legislators, whether in federal, state or local government have, of course, a much wider latitude than other governmental officials in selecting the area and subject matter of their activity and concern. For this reason they have a proportionately greater obligation to advance and support laws which help to translate natural rights into civil rights.[66]

We cannot, however, ignore the problem of pleasing one's constituents which every elective official faces if he hopes to continue in office. Archbishop Lawrence J. Shehan of Baltimore noted:

> In this, the oldest most venerable See in the United States, it should be particularly disconcerting to all of us to know that last year an equal accommodations ordinance then before the Baltimore City Council failed to receive the support of some Catholic legislators who represented districts heavily Catholic in population. Does this mean that many of our own people have failed to recognize the serious duty of justice which flows from the basic equality of men of all races and all social conditions?[67]

Archbishop Shehan charitably made no

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[64] 1 John 4:20.

[65] *Pacem in Terris* para. 56 (1963), citing Leo XIII, *Rerum Novarum* para. 29 (1891).

[66] "If our congress is worthy of ideals and traditions of this nation, if its members are devoted to the common good of all of our citizens, it will not hesitate to enact efficient civil rights legislation in this session. What our congressmen must know and know immediately is that their white constituents in this and every part of the country are just as determined. This is not a matter of political persuasion. It is a matter of Christian conscience. It is time that each and every Christian speak and act forthrightly in this matter." Address of Cardinal Ritter to St. Louis Pastoral Institute on Human Rights, St. Louis Review, Sept. 20, 1963, p. 4, col. 3.

[67] 1963 Pastoral Letter "Racial Justice" p. 3.

effort to allocate blame. We may well wonder how responsible before God the voter may be who votes according to his prejudices rather than according to the dictates of an informed and upright conscience. We may equally well wonder, though, how responsible before God a particular legislator may be who merely votes according to his constituents' prejudices without making any effort to eradicate those prejudices or to ignore them under certain circumstances when those prejudices conflict with divine law.

Practitioner

As an officer of the court no lawyer can ignore his responsibility to the public even in those phases of his work which constitute the so-called private practice of law. Neither the demands of his private clients nor even the contemporary demands of the body politic can be completely determinative of his actions. The lawyer has an affirmative duty to help to mold public attitudes toward fair procedures and due process. And to the extent that private litigation helps to shape and mold the law, the lawyer has an obligation to arrest the tendency for practice to drift downward to the level of those who have the least understanding of the issues at stake.[68]

Regardless then of the role which he plays in the profession of law or in public life, the lawyer must take some part in the present struggle of the Negro to attain and enjoy a full measure of civil rights. Regardless of the role which he plays in the profession of law or in public life, the lawyer must also take some part at the personal and local level in the struggle to attain equality for the Negro.[69]

The opportunities for the Catholic lawyer are many. His talents and skills make him particularly valuable in organizing and conducting diocesan conferences on interracial justice.[70] His powers of persuasion can win the support of his local Holy Name Society for the resolution adopted at the 1963 National Convention which called upon the members of the Society to realize in practice their moral obligation to support the rights of all citizens irrespective of race, color or national origin.[71]

In particular the Catholic lawyer should take the lead in opening all Catholic organizations to all Catholics without discrimination on grounds of race or color.[72] Nor

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[68] STONE, LEGAL EDUCATION AND PUBLIC RESPONSIBILITY 3 (1959).

[69] *Cf.* 8 American Bar News, Sept. 15, 1963, p. 3, col. 1, for the report of the statement of principles drafted by the Special Committee on Civil Rights and Racial Unrest and unanimously approved by the Board of Governors of the American Bar Association at the 1963 annual meeting. The report urges lawyers to: (1) help organize and serve with civic groups sincerely seeking peaceful and lawful solutions to civil rights problems; (2) serve with bi-racial committees where local conditions permit to help eliminate unconstitutional statutes, ordinances and practices; (3) help develop and support needed affirmative legislation or programs, and (4) publicly urge respect for the judiciary and the legal process.

[70] See Long Island Catholic, Oct. 17, 1963, p. 1, col. 1, for the reports of the Catholic Conference on Interracial Justice of the Diocese of Rockville Centre, New York.

[71] Long Island Catholic, Sept. 5, 1963, p. 20, col. 6.

[72] The Knights of Columbus membership procedure which enabled four members of Chicago Council 182 to blackball the application for membership of a Negro has been rightfully condemned in all Catholic circles and will be reviewed at August 1964 convention of the organization. Brooklyn Tablet, Nov. 21, 1963, p. 8, col. 1. Such an incident points up the need for Catholic lawyers to scrutinize carefully the constitutions and by-laws as well as the practices of the organizations to which they belong.

should the Catholic lawyer limit his activities on behalf of interracial justice to Catholic organizations. Not only should he hold membership in appropriate inter-faith or secular organizations but he should take a personal part in their activities, supporting worthwhile projects, suggesting lawful and efficient methods for attaining legitimate ends, moderating imprudent zeal,[73] defending the organization against unfair attacks or accusations, smoothing the procedure of meetings, advising on the drafting or amending of constitutions and by-laws, and serving on committees or accepting office.

Interracial councils, local school boards, and other groups of this nature present the most effective means for direct action in the battle against discrimination. Other organizations such as the Boy Scouts of America and the Big Brothers, on the other hand, frequently offer a more personal and satisfying opportunity to further the spirit of brotherly love and further the association of white and Negro boys at a most impressionable age.[74]

Any pastor faced with racial problems within the boundaries of his parish will welcome the services of a Catholic lawyer whether he is a parishioner or not. Confraternity of Christian Doctrine classes must be staffed with teachers. The St. Vincent de Paul Society requires experienced and wise as well as charitable and kind members to seek out the deserving poor and to protect charitable funds from unworthy claimants. The pastor himself as well as his curates need the advice of educated laymen in planning programs to diminish prejudice in the parish.

Poor and uneducated parishioners seek guidance in finding the proper governmental agency for their needs involving unemployment insurance, workmen's compensation, social security, welfare, public housing, medical or hospital care, counseling service, and similar health and welfare services. While information and assistance in many of these needs can usually be had from the Diocesan office of Catholic Charities, the very existence of such an office is sometimes unknown to those who need its services. Moreover, a telephone call from a lawyer or other responsible person will frequently ease the path for a deserving needy person.

Parishes with sizable Negro populations usually have a substantial need for legal aid services.[75] Poor people usually need direction in small claim cases, landlord-tenant matters, wage disputes, and other areas where the amount involved will not warrant hiring a lawyer no matter how just the cause. Many communities have a legal aid society to which such clients may be referred. In the absence of such a society some bar associations and a few Guilds of Catholic Lawyers have appointed legal aid committees to handle charitable cases on an organized and efficient basis. Where such facilities exist the lawyer should willingly

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[73] "When we are confronted with complex and far-reaching evils, it is not a sign of weakness or timidity to weight carefully the proposed remedies. Prudence will guard against the rashness which may endanger solid accomplishment—but prudence must never serve as an excuse for inaction or unnecessary gradualism, or as a reason for not holding a straight, steady course toward our goal of full justice." Shehan, 1963 Pastoral Letter "Racial Justice" pp. 9-10.

[74] For further concrete suggestions, see Statement and Resolutions adopted by Council Delegates of National Catholic Conference for Interracial Justice, 37 Interracial Review, Jan. 1964, pp. 11-15.

[75] The exception would be a neighborhood populated by professional people or other high-income Negro families.

assume a fair share of the burden or cost involved. Where there are no such facilities he should endeavor to secure the services of his local colleagues at the bar so that the phrase "To none will we deny justice" will not be an empty boast.

In criminal matters the attorney should take similar measures to assure justice to all whether or not his community has the services of a legal aid society or a public defender. In the area of crime, however, the lawyer has the additional obligation to participate in community and parish efforts at every level to help eliminate the causes of crime and juvenile delinquency.

Conclusion

Obviously the nature and variety of opportunities available to the lawyer in the battle for civil rights, far exceed the time or talents of any individual. But no lawyer can entirely escape involvement in the present crisis. Neither barbed wire, nor restrictive covenants nor discriminatory legislation can stop the tide of history nor halt the progress of our fellow Negro citizens toward an ever increasing share in the rights, privileges, advantages and blessings which all Americans should enjoy.

The lawyer dare not fight a rear guard action. The Catholic lawyer in particular, dare not shut his ears to the voices of those whose wrongs cry to God for vengeance.

The need of the hour and the duty of every lawyer is threefold:

1. To become personally involved in the problem of civil rights; to take an active interest in some phase of the problem and make positive efforts to play the role for which he is best fitted by reason of training, information, experience, interest or even proximity or opportunity.
2. To act as a leaven in society; to preach the doctrine of the equality of men; to influence public opinion to the farthest limits of his effectiveness so that necessary but sometimes unpopular reforms may be effected.
3. Finally, but most importantly to refer all these matters to the realm of his conscience, asking God's forgiveness for past offenses and begging the Holy Spirit to enlighten his mind and inspire his heart and those of his fellow citizens with a love for every man as an image of his Creator.

In the course of an address at the dedication of the Cornelius Drew Houses in New York City, the first City housing project to be named after a Catholic priest, his Eminence, Francis Cardinal Spellman, Archbishop of New York, took occasion to make a major pronouncement on race relations and civil rights. His concluding paragraphs might well be pondered by every American, but particularly by every American lawyer.

> Our Negro brother wants more than a house in America. He wants a home in America. He wishes to feel at home here. He belongs fully to America and he wants to feel fully accepted here. Until his desires are fulfilled none of us can be assured of the blessings of liberty for ourselves and our posterity.
>
> America has met her problems in the past, and has met them successfully and without turmoil. We must believe that she will meet this problem and that it too will be successfully resolved.
>
> May we, through our cooperative efforts and our humble prayers, beseech Almighty God, the Creator and the loving Father of all peoples and all races, to hasten the day when in our beloved land liberty and justice will prevail for all men.[76]

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[76] N.Y. Catholic News, July 18, 1963, p. 5, col. 1.